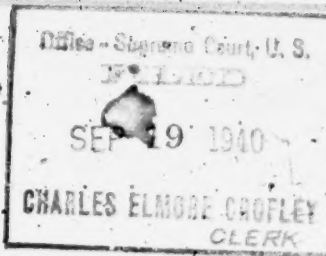


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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. **281-282**

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF
CHICAGO, AND OTHERS,
Respondents.

MOTION.

WEIGHTSTILL WOODS; *Court Trustee,*
Petitioner.

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Respondents.

MOTION.

Petitioner respectfully makes motion, that the court will excuse the printing of four large volumes of the *original record filed in the District Court* in this cause on December 30, 1937. These *original volumes* by a special order of the District Court dated June 14, 1939 were sent by the Clerk of said court to the Clerk of the Circuit Court of Appeals, and were held by him without filing and without notation on his docket. The Clerk of the Circuit Court of Appeals sent them to the Clerk of this court pursuant to Praecipe (PR. 1035) and pursuant to special order of the Circuit Court of Appeals entered

June 16, 1940. (PR. 1002-1003.) Petitioner submits herewith detailed suggestions as to said *four volumes of original record*, to show that printing them at this time would serve no useful purpose.

Respectfully submitted,

WEIGHTSTILL WOODS,
As Court Trustee, Petitioner.

SUGGESTIONS. AS TO PRINTING.

The Printed Record Before This Court.

Three Printed Volumes, 1037 Pages.

(1) The Court Trustee, as petitioner, respectfully says that all pertinent records, orders and proceedings which occurred in the Circuit Court of Appeals, have been printed for use in this court pursuant to the praecipe therefore, which was filed in the Circuit Court of Appeals on July 15, 1940. (See PR. Pages 1034-1037.) Counsel for respondents did not file any counter-praecipe, nor any objections.

(2) Petitioner also shows that all parts of the record certified from the District Court, that were printed upon request of respondents for use in the Circuit Court of Appeals, are before this court in printed form. (See certificates at PR. 420a and 639.) Said printed matter used in the Circuit Court of Appeals (PR. Pages 1 to 837), was made pursuant to order October 4, 1939 by the Circuit Court of Appeals. (PR. 833.) In addition to parts from the *copy* of record as *certified* by the Clerk of District Court (PR. 816), said printed matter includes a summary of evidence and exhibits prepared by opposing counsel and handed to the Clerk of the Circuit Court of Appeals. (PR. 171 to 657.) That summary was made after record was filed in the Circuit Court of Appeals. The summary was never filed nor any notation of lodgement made on the docket of any court.

The Subject Matter of This Motion.

**Four Unprinted Volumes from Trial Court, Which Are
Original Record in District Court.**

(3) Petitioner says that after the trial in the District Court, four large volumes were assembled by the Court Reporter who attended the trial. They include documentary evidence, testimony and pleadings, considered by District Court in making its findings and decree. These four volumes were presented to the District Court for approval, and were filed in that court pursuant to an order of that court on December 30, 1937. An inspection of said four volumes of evidence and exhibits (now on deposit with the Clerk of this Court) shows that they are *original record* from the District Court, filed in that court on December 30, 1937, and not filed at any time in the Circuit Court of Appeals. Said four volumes are not mentioned at any place on the docket of the Circuit Court of Appeals, and are not mentioned in the transcript of record from that court filed in this court, except that the praecipe by petitioner asks that said volumes be sent here under Rule 10(4). (PR. 1035.)

(4) When respondents contend that said *four volumes of original record* ever became a part of the appeal record, they speak wishfully. The contention is not sincere because (1) said documents were never filed in the Circuit Court of Appeals, because (2) respondents in that court stated to that court that said documents were "lodged" with the Clerk, and because (3) no entry was ever made as to said documents in the docket of said Court of Appeals. On September 8, 1939 the respondents filed their motion wherein they stated positively to the Circuit Court of Appeals that said four volumes of exhibits and evidence were "lodged" in that court. Now in

August 30, 1940 by their answer, they tell this court the exact opposite, that said volumes were part of the record in said Court of Appeals. That this is mere assertion is proven by their failure to point to any entry of the record to support their contention.

(5) If counsel for respondents ever thought at any time that said original volumes could be matter of record on review, why did they ask the Circuit Court of Appeals to approve their failure to print any part whatever of said four volumes? If said volumes were thought to be matter of record on review, how absurd for counsel to have sent up by a special order of the District Court said four volumes, then immediately to ask the Circuit Court of Appeals for the printing order which does not mention said original record, four volumes of evidence and exhibits? (PR. 833:)

(6) In addition to said *certified copy* of record (mentioned at paragraph 2 above) as certified to the Circuit Court of Appeals (PR. 816), and over the objection made by the Court Trustee, the respondents after they appealed to the Circuit Court of Appeals, secured an order to send this original record of four volumes (mentioned at paragraphs 3-5 above) to the Circuit Court of Appeals. These four volumes are not certified to the Circuit Court of Appeals, and were never filed in the Circuit Court of Appeals, but were in the custody of the Clerk of that court until they were sent to this court.

(7) These volumes bear the filing stamp of the District Court, but no filing stamp of the Circuit Court of Appeals, and there is no entry on the docket of the Circuit Court of Appeals at any time with reference to these four volumes. The record nowhere shows whether or not the Judges of the Circuit Court of Appeals examined or made use of these four volumes, nor what use, if any,

they did make of them. The order for consolidation and printing of records made by the Circuit Court of Appeals on October 4, 1939, does not mention them. (PR. 833.)

The Motion Now Made.

(8) Your petitioner understands and contends that Rule 10(4) of this court and similar rules of the Circuit Court of Appeals and of the District Court, provide for sending original records and documents from one court to another, but do not intend that such original records and documents shall dispense with usual *certified* copy of the record of whatever matters are deemed essential to review. Your petitioner understands and contends that said Rule 10(4) and like rules are made for the purpose of permitting the reviewing court to see original documents for purposes of comparison and better understanding of the certified record, and that documents and other original record which are forwarded to reviewing court under such rules, cannot serve any other purpose. The praecipe under which said original volumes are sent to this court, specifically mentions Rule 10(4) as the reason. (PR. 1035.) No counter-praecipe was filed by respondents. The Praecipe reads as follows:

"You are requested not to print, but to send to Washington as original Exhibits, the four volumes which were certified and approved by the District Court on December 30, 1937, and were sent to this court pursuant to special order by the District Court on June 14, 1939. Your authority for sending these documents as special Exhibits will be found in the order by Circuit Court of Appeals dated May 16, 1940; and Rule 10(4) by the Supreme Court."

(9) To print such original record and documents, which are forwarded under such orders and rules, would defeat rather than promote such purpose, and would really be duplication of matter already printed, so far as the rec-

ord has been printed. To print said four volumes of original District Court Record in this cause, would cost perhaps four thousand dollars.

(10) Petitioner therefore urges his motion that the court will dispense with the printing of said four volumes of the original District Court record, or that the court will give appropriate directions.

Respectfully submitted,

WEIGHTSTILL WOODS,
Court Trustee, Petitioner.

COUNTY OF COOK, }
STATE OF ILLINOIS. } ss.

WEIGHTSTILL Woods, being first duly sworn, states that he has prepared the foregoing motion and suggestions; that he is familiar with the records in the several courts; and the statements made in the foregoing motion and suggestions are true, to the best of his knowledge and belief.

WEIGHTSTILL Woods.

SUBSCRIBED and SWORN to before me this Fourteenth day of September, A. D. 1940.

MARIAN F. MANCE,
Notary Public, Cook County, Ill.

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